

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT
3 OF NEW YORK
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5 JACK A. BLACK, as Administrator of the Goods
6 and Chattels, Rights and Credits of
Christopher A. Black,

Plaintiff,

77-CV-279

7 -vs-

79-CV-92

8 CORNELL UNIVERSITY and PAUL M. DARSIE, M.D.,

9 Defendants.
10 -----

11 Proceedings in the above-entitled matter
12 came on before the United States District Court,
13 Northern District of New York, U. S. Court House,
14 Syracuse, New York, on July 13, 1981, in chambers,
15 before the HONORABLE HOWARD G. MUNSON, Chief
16 U. S. District Court Judge for the Northern
17 District of New York.

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21 Reported By:

22 Hiram F. Sheffer
23 U. S. District Court Reporter
24
25

1 APPEARANCES:

2 FOR THE PLAINTIFF: MATHEWS & LOVE, ESQS.
3 University Building,
4 Syracuse, New York 13202

5 BY: VERNER R. LOVE, ESQ.,
6 Of Counsel.

7 FOR THE DEFENDANT: HANCOCK, ESTABROOK, RYAN,
8 (Cornell) SHOVE & HUST, ESQS.
9 One MONY Plaza
10 Syracuse, New York 13202

11 BY: DONALD MCCARTHY, ESQ.
12 Of Counsel.

13 FOR THE DEFENDANT: SMITH, SOVIK, KENDRICK,
14 (Dr. Darsie) MCAULIFFE & SCHWARZER, ESQS.
15 Empire Building,
16 Syracuse, New York 13202

17 BY: LAURENCE SOVIK, ESQ.,
18 Of Counsel.

1 THE COURT: All right, Mr. McCarthy.

2 MR. MCCARTHY: If your Honor please,
3 after some discussions here this morning,
4 I think that Mr. Love and I have agreed with
5 respect to a settlement of the Plaintiff's
6 action, the first action that he brought,
7 which was against Cornell University.

8 But of course, as your Honor knows, a
9 motion was brought on by the Plaintiff some-
10 time last year to consolidate the two actions,
11 the action against Cornell, and a second
12 action that was brought against Dr. Darsie,
13 and I think primarily in order to effect the
14 settlement we would ask that your Honor
15 sever those two actions.

16 Thereafter it is anticipated that the
17 action against Cornell University and also
18 claims based against the University as the
19 agent, its employees or servants, and arising
20 out of the incident which ultimately led to
21 the death of Christopher Black, with the
22 exception of the action brought against its
23 employee, Dr. Darsie, for his alleged
24 negligence and malpractice, all be discontinu-
25 ed and settled on the merits.

1 And also that the cost claim that was
2 interposed against Dr. Darsie would be dis-
3 continued at this time in, and of course all
4 of the considerations for, this disposition
5 would be the payment by representatives of
6 Cornell University to the Plaintiff in the
7 sum of \$55,000.

8 THE COURT: And that would include any
9 claim that the Plaintiff's Administrator
10 would have for wrongful death or conscious
11 pain and suffering?

12 MR. MCCARTHY: Yes, and/or.

13 THE COURT: Mr. Love?

14 MR. LOVE: Yes, I agree with that and
15 I will join in the motion.

16 THE COURT: All right, Mr. Sovik?

17 MR. SOVIK: Well, I don't think that I
18 have any standing to object otherwise to the
19 motion.

20 THE COURT: If the motion to sever is
21 granted, then the Amended Answer of Cornell
22 University, which includes the cross-claim
23 against the Defendant Dr. Darsie would have
24 to be stricken. That is the Answer that con-
25 tains the claim over against Dr. Darsie,

1 isn't it?

2 MR. MCCARTHY: Right.

3 THE COURT: And what would happen to Dr.
4 Darsie's Amended Answer which contains what
5 is titled as a Cross-Claim against Cornell?

6 MR. SOVIK: I think that that is taken
7 care of by the General Obligations Law inso-
8 far as it is an active claim that is no
9 longer in the case. And since Dr. Darsie
10 has no claim against Cornell which he can
11 collect upon, it may or may not be in the
12 case, depending on what the proof develops
13 insofar as an apportionment of Cornell's
14 relative or proportionate culpable conduct
15 is concerned.

16 I think that that has to await the
17 development of the proof, and if there is
18 some suggestion in the case or some proof
19 that Cornell independently of Dr. Darsie was
20 also guilty of culpable conduct, that would
21 have to be submitted to the jury in their
22 final instructions.

23 It is a little bit hard to predict, at
24 this point, because we have not heard the
25 proof.

1 THE COURT: What you are saying is that
2 if that is submitted to the jury, then the
3 Defendant, Dr. Darsie, would be entitled to
4 have set off against whatever verdict the
5 jury might return, the percent of Cornell's
6 culpable conduct, or the \$55,000, whichever
7 is greater?

8 MR. SOVIK: Yes, that is the way I
9 understand that.

10 THE COURT: Do you understand that, Mr.
11 Love?

12 MR. LOVE: I believe that would be the
13 essence of the statute, Judge.

14 May we go off the record?

15 (Off-the-record discussion.)

16 THE COURT: Back on the record. I will
17 grant the motion to sever the two actions,
18 and those actions are 77-CV-279 and 79-CV-92.
19 And I will approve the settlement in the
20 amount of \$55,000.

21 MR. LOVE: However, I would like to pre-
22 sent this settlement to Mr. Black as Administra-
23 tor of his son, Christopher Black's, estate.

24 THE COURT: That is all right.

25 (Whereupon Mr. Jack Black was brought into chambers.)

1 THE COURT: Mr. Black, I have just been
2 informed by Counsel that you as Administrator
3 of your son's estate are willing to accept a
4 sum of \$55,000 in full settlement of the
5 action that you have brought against Cornell
6 University. Is that correct?

7 MR. BLACK: That is correct.

8 THE COURT: As I understand, Mr. Black,
9 that in the event that the case is tried
10 against Mr. Paul Darsie, that that \$55,000
11 can be used in mitigation of any judgment
12 that you receive against Mr. Darsie?

13 MR. BLACK: Mr. Love has explained that
14 to me and I understand it.

15 THE COURT: The jury will be requested
16 certainly by Mr. Sovik, and Counsel for Dr.
17 Darsie, that is they determine the percent of
18 culpable conduct that might be attributed to
19 Cornell University, and that that percent or
20 the \$55,000, whichever is higher, is to be
21 deducted from any verdict that they bring in
22 against Dr. Darsie.

23 MR. BLACK: Mr. Love has explained that
24 to me, too, and I understand it.

25 THE COURT: And you as Administrator

1 would approve the settlement with Cornell
2 University?

3 MR. BLACK: Yes, I do.

4 THE COURT: Thank you. Is there any-
5 thing further, Gentlemen?

6 MR. McCARTHY: No.

7 MR. SOVIK: No.

8 (Whereupon the proceedings in chambers were concluded.)

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11 C E R T I F I C A T E
12

13 I, HIRAM SHEFFER, JR., Official Shorthand
14 Reporter for the United States District Court,
15 Northern District of New York, do hereby CERTIFY
16 that the foregoing record taken by me at the time
17 and place noted in the heading hereof is a true
18 and correct transcript of the same, to the best
19 of my ability and belief.
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23 _____
HIRAM SHEFFER, JR.
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